

## THE RIGHT OF SEARCH.

The following is a copy of a Despatch recently sent by Mr. Webster to Hon. EDWARD EVERETT, the American Minister in Great Britain:

DEPARTMENT OF STATE, Washington, March 28, 1842.

Sir: I transmit to you with this Despatch, a message from the President of the United States to Congress, communicated on the 27th of February, and accompanied by a report made from this Department to the President, of the substance of a despatch from Lord Aberdeen to Mr. Fox, which was by him read to me on the 24th ult.

Lord Aberdeen's despatch, as you will perceive, was occasioned by a passage in the President's Message to Congress, at the opening of its late session. The particular passage is not stated by his Lordship; but no mistake will be committed; it is presumed, in considering it to be that which was quoted by Sir Robert Peel, and other gentlemen, in the debate in the House of Commons on the answer to the Queen's Speech, on the 3d of February.

The President regrets that it should have become necessary to hold a diplomatic correspondence upon the subject of a communication from the head of the Executive Government to the Legislature; drawing after it, as in this case, the further necessity of referring to observations made by persons in high and responsible stations, in the debates of public bodies. Such necessity, however, seems to be unavoidably incurred in consequence of Lord Aberdeen's despatch; for although the President's recent message may be regarded as a clear exposition of his opinions, on the subject; yet a just respect for Her Majesty's Government, and a disposition to meet all questions with promptness, as well as with frankness and candor, require that a formal answer should be made to that despatch.

The words in the message at the opening of the session which are complained of, it is supposed, are the following:

"Although Lord Aberdeen, in his correspondence with the American Envoy, at London, explicitly disclaimed all right to detain an American ship, and restricted the British pretensions to search and inquire, yet it could not well be denied by the Executive of the United States, both such right and power must be conceded in the trade." It was upon the right of search, presented only in a few words, and expressed in different words, and therefore left it to be my duty distinctly to declare, that such a right could be made, and should be made, and that the United States had both the will and the ability to enforce their own laws, and to protect their own flag from being used for purposes wholly furnished by those laws, and obstructing to the moral course of the world."

This statement would tend, as Lord Aberdeen thinks, to convey the supposition not only that the question of the right of search had been disengaged by the British Plenipotentiary, at Washington, but that Great Britain had made concessions on that point.

Lord Aberdeen is entirely correct in saying that the claim of a right of search was not discussed during the late negotiation, and that neither was any concession required by this Government, nor made by that of Her Britannic Majesty.

The 8th and 9th articles of the Treaty of Washington constitute a mutual stipulation for concerted efforts to abolish the African slave-trade. This stipulation, it may be admitted, has no other effect on the pretensions of either party than that Great Britain has claimed as a right, and that this Government could not admit as a right, and in the exercise of a just and proper spirit of amity, a mode was resorted to which might render unnecessary both the assertion and the denial of such claim.

There probably are those who think that what Lord Aberdeen calls a right of visit, and which he attempts to distinguish from a right of search, ought to have been expressly acknowledged by the Government of the United States, at the same time, there are those on the other side who think that the formal surrender of such right of visit should have been demanded by the United States, as a precedent condition to the negotiation for Treaty stipulations on the subject of the African slave-trade. But the Treaty neither asserts the claim in terms, nor denies the claim in terms; it neither formally insists upon it, nor formally renounces it. Still, the whole proceeding shows that the object of the stipulation was to avoid such differences and disputes as had already arisen, and the serious practical evils and inconveniences which, if cannot be denied, are always liable to result from the practice which Great Britain had asserted to lawful. These evils and inconveniences had been acknowledged by both Governments. They had been such as to cause much irritation, and to threaten to disturb the amicable sentiments which prevailed between them. Both Governments were sincerely desirous of abolishing the slave-trade; both Governments were equally desirous of avoiding occasion of complaint by their respective citizens and subjects, and both Governments regarded the 8th and 9th articles as effectual for their avowed purpose, and likely, at the same time, to preserve all friendly relations, and to take away causes of future individual complaints. The Treaty of Washington was intended to fulfil the obligations entered into by the Treaty of Ghent. It stands by itself, is clear and intelligible. It speaks its own language, and manifests its own purpose. It needs no interpretation, and requires no comment. As a fact, an important occurrence in national interest, it may have important bearings on existing questions respecting the public law; and individuals, or perhaps Governments, may not agree as to what these bearings really are. Great Britain has discussions, if not controversies, with other great European States, upon the subject of visit or search. These States will naturally make their own commentary on the Treaty of Washington, and draw their own inferences from the fact that such a Treaty has been entered into. Its stipulations, in the mean time, are plain, explicit, satisfactory to both parties, and will be fulfilled on the part of the United States, and it is not doubted on the part of Great Britain also, with the utmost good faith.

Holding this to be the true character of the Treaty, I might, perhaps, excuse myself from entering into the consideration of the grounds of that claim of a right of visit, merchant ships, in certain purposes, at time of peace, which Lord Aberdeen asserts for the British Government, and declares that it can never surrender. But I deem it right, nevertheless, and no more than justly responsible towards the British Government, not to leave the point without remark.

In his recent message to Congress, the President, referring to the language of Lord Aberdeen in his note to Mr. Everett, of the 20th of December, 1841, and in his late despatch to Mr. Fox,

These declarations may well lead us to doubt whether the apparent difference between the two Governments is not rather one of definition than of principle.

Lord Aberdeen in his note to you of the 20th of December, says the

"Unquestionable right, as he has already done in the most explicit terms, not right on the part of the British Government to search American vessels to time of peace. The right of search, as he has understood it, is not to search, but to seize, and to have no existence but in the high seas during peace. The understandings, however, that the right of search, as so understood, is to be exercised on the high seas, are not to be denied. The sole purpose of the British Government in so far as the rights of search, as so understood, are concerned, is to ascertain that the American vessel is not a slave-trade vessel, or is not engaged in any other nefarious purpose."

These rights, as so understood, are perfectly well known, and have no existence but in the high seas during peace.

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As we understand the general and settled rules of public law in respect to ships of war sailing under the authority of their government, "to arrest pirates and other public offenders," there is no reason why they may not approach any vessel at sea, for the purpose of ascertaining their real characters. Such a right of approach seems indispensable for the fair and discreet exercise of their authority; and the use of it cannot be justly deemed indicative of any design to insult or injure those they approach, or to impede them in their lawful commerce. On the other hand, it is clear that no ship is, under such circumstances, bound to let her, or wait the approach of any other ship. She is at full liberty to pursue her voyage in her own way, and to use all necessary precautions to avoid any suspected minister or hoodwink.

And in his recent despatch to Mr. Fox, he has

"Understood again, moreover, as he has already done in the most explicit terms, not right on the part of the British Government to search American vessels to time of peace. The right of search, as he has understood it, is not to search, but to seize, and to have no existence but in the high seas during peace. The understandings, however, that the right of search, as so understood, is to be exercised on the high seas, are not to be denied. The sole purpose of the British Government in so far as the rights of search, as so understood, are concerned, is to ascertain that the American vessel is not a slave-trade vessel, or is not engaged in any other nefarious purpose."

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